No. 83-580

In The

Supreme Court of the United States

October Term, 1983

CORNELIUS DENNIS BRISLAWN, JR.,

Appellant,

vs.

BEVERLY JOAN GATEWOOD BRISLAWN,

Appellee.

On Appeal from the Supreme Court of Alabama

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

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Appellee moves the Court to deny the Writ of Certiorari on the ground that the appeal does not present a substantial Federal question because the Alabama Supreme Court has correctly applied the universal standard to determine whether there are sufficient minimum contacts to afford in personam jurisdiction.

ARGUMENT

A. This Appeal Does Not Present a Substantial Federal Question.

Appellee moves the Court to deny the Writ of Certiorari on the ground it is from a decision of the Alabama Supreme Court which correctly applies the accepted standard to determine whether Alabama has in personam jurisdiction over Appellant.

The basis for this Brief in Opposition to Writ of Certiorari is more easily explained in the context of an accurate representation of the decision from which this appeal is taken. On page 16 of Appellant's Brief, he seeks to impress upon this Court that the lower Court "adopted another test, one which has not been sanctioned". Appellant does not bless us with a description of this unsanctioned test he contends the lower Court wrongfully applied to the case sub judice. However, on page 17 of Appellant's Brief, he misinterprets a finding of fact by the lower Court and characterizes it as a rule of law thusly: "Instead, the Court concluded that since Alabama was the last place in the United States where the parties had lived then Alabama was a proper forum." What the Alabama Court actually concluded was that Alabama was the *only* place in the United States where the parties lived together as man and wife. This is a finding of fact, not a rule of law.

The decision of the Alabama Supreme Court which is set out on pages 20 through 28 of the Appellant's Brief, is well written and clearly sets out the issues of this case.

The specific Alabama Rule of Civil Procedure which was applied to the *Brislawn* case is Rule 4.2(a)(1)(B). In applying the Alabama Rule of Civil Procedure to this

case, the lower Court relied upon *International Shoe Co. v. State of Washington,* 326 U. S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95 (1945), and correctly quoted the Rule of *International Shoe Co.,* supra, case as follows:

> "[D]ue process requires only that in order to subject a defendant to a judgment *in personam,* if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" . . .

The jist of the Alabama decree in the case sub judice is that Mr. Brislawn had contacts with the State of Alabama sufficient to satisfy the constitutional requirement of fair play and substantial justice inasmuch as he resided in Alabama ten days with Appellant and then forthwith moved with her to Germany and then sent her in a pregnant condition back to Alabama from Germany. The lower Court's decision in the case sub judice does not make up some new test but simply finds from the facts of this case that it is fair to require Mr. Brislawn to defend himself in Alabama. Appellant, therefore, not only failed to recognize the standard test which was applied by the Supreme Court of Alabama but also failed to discern the difference in a "finding of fact" and a legal "test".

Further, the Alabama Supreme Court correctly concluded that the rule of "minimum contact" has been given broad interpretation by the Courts. The lower Court cites *Calaqaz v. Calhoun,* 309 F. 2d 248 (5th Cir. 1962), where ". . . it was pointed out that mere correspondence with persons in a state may establish sufficient contacts with the state to subject a nonresident to a suit in that state on a cause of action arising out of those contacts." (Page 26). The Alabama Supreme Court further cites

McGee v. International Life Insurance Co., 355 U. S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223 (1957), where a single transaction regarding an insurance contract provided the sufficient and necessary contacts to meet the constitutional requirements of "minimum contacts".

There is no logical or constitutional basis to conclude on the one hand that it is reasonable to require one to defend oneself in a state where one's only contact has been mere correspondence sent to that state, and on the other hand to conclude that Mr. Brislawn should not be required to defend himself in Alabama where he lived for ten days and which represents the only state in the United States of America where he and his wife cohabitated.

Can Mr. Brislawn honestly state to the Supreme Court of the United States that it is more reasonable to require Appellant to sue him for divorce, support and alimony in the State of Washington where she and the child have never been than it is to require Mr. Brislawn to defend himself in Alabama where he and his wife have lived together? Mr. Brislawn sent his wife back to Alabama while he was in Germany; not to the State of Washington.

The Supreme Court of Alabama has applied the appropriate law to the facts and its conclusion on the facts is entitled to be upheld by the United States Supreme Court. The issue decided by the Court below was correctly decided. Since the Supreme Court of Alabama has correctly applied the appropriate law to these facts, this case presents no substantial Federal question that is worthy of this Court's consideration.

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CONCLUSION

For the reason stated above, this Writ of Certiorari should not be granted.

Respectfully submitted,

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